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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1963

No. 964

A. C. KING, ET AL.,

*Petitioners,*

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

*Respondents.*

On Petition for Writ of Certiorari To
The United States Court of Appeals
For The Fifth Circuit

## BRIEF IN OPPOSITION FOR RESPONDENT THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1963

No. 904

A. C. KING, ET AL.,

*Petitioners,*

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

*Respondents.*

**On Petition for Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit**

## BRIEF IN OPPOSITION FOR RESPONDENT THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA.

### QUESTION PRESENTED

Did the District Court below have jurisdiction of an action by railroad employees against their employer carrier and their collective bargaining representative for alleged breach of the applicable bargaining agreement, where the only relief sought was specific enforcement of the agreement; the only action complained of was the carrier's unilateral transfer of certain work from plaintiffs to employees in a different category; and the only charge of "discrimination" by the bargaining representative — that of "acquiescence" in the transfer — was clearly refuted on summary judgment by evidence which was neither contradicted by plaintiffs, nor countered by affidavit, or any other evidence submitted on their part.

## STATEMENT OF THE CASE

The description of this action in the present petition is so at odds with the record herein that a brief restatement of the facts is essential to put the case in its proper perspective.

The action involves an attempt by a group of carmen helpers to obtain, by judicial decree, exclusive rights to the performance of certain work described as "car oiling and box packing" allegedly guaranteed to them by agreement between their railroad employer and the collective bargaining representative for the craft or class of which they are members, but claimed to have been improperly taken away from them and assigned to other members of the same craft or class known as carmen. The suit was brought against respondent Atlantic Coast Line Railroad Company, petitioners' employer, and respondent The Grand Lodge Brotherhood Railway Carmen of America, their bargaining representative.

In asserting exclusive rights to the car oiling and box packing work, petitioners specifically relied on Rule 404 of the current agreement between the Railroad and the Brotherhood, which includes that work in describing the duties of carmen helpers. (Ap. 11a.)[1] The principal relief sought in the action is specific enforcement of Rule 404. (Ap. 16a - 17a.)

Although it is alleged that "Both defendants are guilty of engaging in hostile discrimination against the plaintiffs", that allegation is followed only by a description of the *Railroad's* action in posting bulletins the effect of which was to transfer the work in question from carmen helpers to carmen. (Ap. 12a - 13a.) There was no allegation of any joint action taken by the Railroad and the Brotherhood.

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1 Reference is to Appendix to Petition for Writ of Certiorari.

It was not claimed that the Brotherhood was consulted in any way, or, that its concurrence in the work transfer was sought or obtained. There was no allegation of any conspiracy between the Railroad and the Brotherhood. There was no allegation that the transfer had any different impact on Negro than on white carmen helpers.[2]

Although petitioners charged the Brotherhood with "discrimination" and "breach of the fiduciary duty" imposed on it by the Railway Labor Act, with respect to the employees it represents, the only support for such charges consisted of allegations that the work transfer was "permitted" and "acquiesced in" by the Brotherhood. (Ap. 13a - 15a.) In connection with those conclusions, the only factual allegations were that petitioners requested the Brotherhood's local grievance representative to protest the transfer; that the protest was rejected by the Railroad's Master Mechanic on the grounds that Rule 404 "does not give oilers and packers exclusive rights to this work"; that on August 17, 1960 (less than two months prior to the filing of the original complaint herein), the Local Chairman turned the matter over to the Brotherhood's General Chairman; and that "more than thirty (30) days have passed" since this matter was presented to the company and as of this date, the matter has not been settled." (Ap. 13a - 14a.) Although it was charged that the General Chairman had stated his opinion that "there is nothing that can be done about this situation", there was no allegation that he refused to process petitioners' grievance, that he was not in fact continuing to process it at the time this action was filed, or that he did not handle it in good faith and in accordance with the established grievance machinery.

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2 Petitioners purported to sue on behalf of themselves and all other carmen helpers; and while it was alleged that most of the petitioners were Negroes, it also appeared from the original complaint (Ap. 53a) and the amended complaint (Ap. 8a, 11a-12a) that there are white employees in the carmen helper category, as well as Negro employees in the category of carmen to which the work in dispute was assigned by the railroad.

3 Prior to the filing of the original complaint. See Ap. 59a.

Petitioners' original complaint (Ap. 51a) was dismissed by the District Court on the ground that the dispute was one growing out of the interpretation or application of agreements, and hence within the exclusive jurisdiction of the National Railroad Adjustment Board under the doctrine of this Court's decision in *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239. (Ap. 74a - 75a.) In *Britton v. Atlantic Coast Line Railroad Company*, 303 F. (2d) 274, this ruling was affirmed by the Court of Appeals below on the ground that it was permissible for the District Court to conclude that, "reading the detailed allegations of the complaint together with annexed exhibits, it was clear that, in contrast to general conclusory allegations of discriminatory unfair representation and practices, this was really a suit on, and a controversy over, the interpretation of the collective bargaining agreement." (Ap. 3a - 4a.)

Feeling, however, that the District Court should not have expressly denied leave to amend the complaint, and expressing concern lest an outright affirmance of the dismissal of the original complaint foreclose plaintiffs, by the principle of res judicata or otherwise, from further litigation of any claim they might be able to assert by proper pleading of some unlawful discrimination, as contrasted with the contract enforcement action, the Court of Appeals remanded the case so that appellants might be afforded leave to amend the complaint to assert any cause of action based on the discrimination theory. (Ap. 4a.)

Following remand petitioners filed an amended complaint (Ap. 7a) which was substantially unchanged from the original, contained no new or different allegations of fact, and sought precisely the same relief — specific enforcement of petitioners' alleged rights under Rule 404 of the collective bargaining agreement.

Thereafter the Railroad filed its motion to dismiss the amended complaint (Ap. 21a), and the Brotherhood moved in the alternative to dismiss or for summary judgment (Ap. 21a), attaching to such alternative motion an officially certified copy of proceedings before the National Roalroad Adjustment Board, Second Division, in its then pending Docket No. 3860 (Ap. 23a - 42a), showing that contrary to petitioners' allegations that the Brotherhood had acquiesced in the action of the Railroad (the *only* "discrimination" charged against the Brotherhood), it had in fact processed a claim on behalf of similarly situated employees, including a number of the petitioners, through the contractual grievance machinery on the property of the Railroad and to said Second Division, where, following a deadlock between the carrier and labor members of the Division, the claim was awaiting decision by a neutral referee.[4] No counter affidavit or other evidence was offered by petitioners in opposition to said alternative motion.

The District Court granted summary judgment on the ground that since no evidence had been adduced raising a genuine issue of hostile discrimination, the matter lay within the exclusive jurisdiction of the Adjustment Board, saying:

> ". . . it appears to the Court that the Defendant Union has not acquiesced in the the actions of the Defendant Railroad complained of in the amended complaint, but on the contrary the Defendant Union has actively processed a grievance on behalf of some of the plaintiffs and other employees similarly situated through the grievance machinery existing under the controlling agreement between the Defendant Union and the Defendant Railroad. In that grievance it has attacked the very actions of the Defendant Railroad

4 The referee's decision (subsequent to the judgment of the District Court and hence not a part of the record herein) denying the claim on its merits, noted at pages 9-11 of the petition herein, in no way alters the fact that the Brotherhood opposed, rather than acquiesced in, the Railroad's action.

complained of in the amended complaint. . . . No counter-affidavit or other evidence has been submitted by the Plaintiffs from which it could be inferred that the Defendant Union has not prosecuted the grievance in good faith or that it has unfairly represented the Plaintiffs in the matters which they complain of. . . ." (Ap. 5a.)

The judgment of the District Court was affirmed by the Court of Appeals below, with the observation that "we see no difference between the factual situation under the original complaint and that which is before us on this appeal. . . ." (323 F. (2d) 1005; Ap. la.)

## ARGUMENT

Nothing in the record herein or the arguments of petitioners warrants a review of the decision below by this Court.

Contrary to petitioners' assertions, under the heading "Reasons for Granting the Writ", the decision below presents no conflict with decisions of this Court or other Court of Appeals decisions.

As was noted by the court below in its opinion in connection with the original complaint herein (*Britton v. Atlantic Coast Line Railroad Company*, 303 F. (2d) 274), there has been no real dispute among the parties as to the legal principles controlling this litigation. In a dispute over the interpretation and application of a railroad collective bargaining agreement, where the claimant seeks to enforce rights under the agreement, the matter lies within the exclusive jurisdiction of the National Railroad Adjustment Board. *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239. On the other hand, the courts admittedly possess jurisdiction to remedy hostile or invidious discrimination by a

bargaining agent in violation of its fiduciary duty towards members of the craft it represents. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192. The present case clearly falls within the former rather than the latter category, both on the basis of the allegations of the amended complaint, and on the unrefuted showing, on summary judgment, that the respondent Brotherhood supported and actively processed petitioners' grievances rather than opposing them.

The nature of the action must of course be determined on the basis of the pleadings and evidence before the courts below, rather than the description of it in arguments contained in the present petition. Here it is clear that the present action relies on, rather than challenges, the agreement between the Railroad and the Brotherhood; and in spite of petitioners' transparent attempt, in paragraph VII of the amended complaint (Ap. 9a), to evade the jurisdictional obstacle by the claim that they "are not asking or seeking this Court's interpretation of any contract", the prayer of the amended complaint seeks specific enforcement of Rule 404 of the present agreement between the Railroad and the Brotherhood. In none of the "discrimination" cases relied on by petitioners was the action entertained for purposes of specific enforcement of a collective bargaining agreement.

While it is thus apparent that the amended complaint failed to remedy the lack of jurisdiction which resulted in dismissal of the original complaint, summary judgment was properly based on the additional ground that the undisputed evidence before the District Court clearly refuted petitioners' charge that the Brotherhood had permitted or acquiesced in the Railroad's action. The apparent contention of petitioners that the District Court could not properly determine the issue of subject-matter jurisdiction in the light of undisputed facts adduced on the summary judgment

motion (Petition, p. 7 - 8) is so frivolous as to require no argument. There being no genuine issue of actionable discrimination, all that was left was a contract enforcement action, a cause clearly within the exclusive jurisdiction of the Adjustment Board.

## CONCLUSION

For the foregoing reasons, it is clear that the application of controlling legal principles by the courts below, and the dismissal of the action for want of jurisdiction, were in complete conformity with the decisions of this Court. It is accordingly submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Respondent, The Grand Lodge Brotherhood Railway Carmen of America, has been furnished to William H. Maness, 704 Florida Theatre Building, Jacksonville 2, Florida; Ernest D. Jackson, Sr., 410 Broad Street, Suite #208, Jacksonville, Florida and Releford McGrief, 411 Broad Street, Jacksonville, Florida, Attorneys for Petitioners, by United States Air Mail, this 7th day of April, 1964.

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